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February 28, 2001

Alaska Division of Governmental Coordination
Sent via Fax 907-465-3075

RE: Draft ACMP Regulation Changes to 6 AAC 50

Please consider the following comments on the above-referenced changes to the consistency regulations for the Alaska Coastal Management Program (ACMP). In addition to these general comments, we participated in the review process with the Alaska Oil and Gas Association (AOGA) and fully support and endorse the specific changes suggested by AOGA. To begin with, we feel the most important goals of the changes must be to clarify applicability of projects to consistency review; improve the coordination between state, local and federal reviewing agencies; and to improve the current elevation and appeal procedures. To that effect, please consider the following:

- Thank you for breaking the regulations out into Articles of general applicability. This is a long needed structural change.
- DGC should utilize this effort to conform the scope of the regulations to the intent of the CZMA and the new federal regulations at 15 CFR 930 – for example, limiting applicability to projects which "may reasonably have a direct and significant impact on a coastal use or resource."
- Please clarify in the regulations and supporting materials that only projects actually requiring an authorization from a "resource agency" within the "Coastal Zone" are subject to consistency review.
- The proposed regulations for revising and updating the ABC lists goes a long way towards making this cumbersome process more efficient. However, as discussed below, we feel it also needs to address Federal Lands and permits and to allow for third parties to petition for modifications to the lists. In addition, section 700(b) needs completely changed since, as written, it would render the A-B lists useless for most circumstances.

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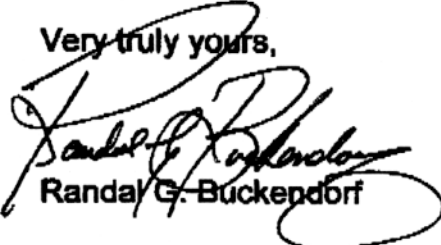
- Day one of the review process for a federal project should be the day that DGC "receives the federal consistency determination on information" as is provided for in federal regulation.
- Comments and proposed stipulations from third parties, local, state and federal agencies must be related to enforceable ACMP policies. In addition, the regulations should eliminate the need for DGC to give deference to agencies or coastal districts except in very limited circumstances.
- Due to increased workloads at DGC and tight time limits, we feel some process is needed for the applicant to be copied on all comments to DGC, or the state agency if subject to a single agency review, by a third party or agency in the same manner and on the same day as provided to the agency. We have recently encountered situations where comments submitted by an agency were not received for weeks.
- The process would greatly benefit from lists of state, local and federal authorizations subject to consistency review in either regulation or guidance that is adopted by reference.
- The regulations and corresponding lists for categorically consistent determinations and general consistency determinations needs to be expanded to include Federal permits and State resource agency permits for activities on Federal lands, especially since the new federal regulations allow the same process.
- Previously authorized activities undergoing renewal or reauthorization should only be required to undergo an additional consistency determination if the proposed activity will affect a coastal use or resource in a substantially different manner than described in the original authorization.
- "Coastal Zone" must be defined to explicitly exclude Federal Lands as provided for in the CZMA and its implementing regulations.
- The process for multiple "clock stoppages" on different topics should be disallowed. We recommend the following: once an agency has requested additional information, DGC verifies the legitimacy of the request, and the clock is stopped; the applicant then submits additional information and the agency then has seven (7) days to deem it complete. This process is acceptable, provided the coordinating agency screen requests for further information. To this effect, we suggest that subsequent agency requests for more information should be limited to the scope of the first request. Further, we also suggest that the agency should only have five (5) days for a second request and three (3) days for all additional requests.

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- We strongly urge deletion of modifiers such as "detailed" and "comprehensive" from proposed sections 325 and 345, as it will result in endless litigation over the open ended terms.
- Specific definitions in the regulations should be consistent with the statutes. For example, "Federally Regulated Activities" should be changed to "activities requiring a Federal permit" subject to consistency review; the regulations also need to make sure that the phrase "consistent to the maximum extent practicable with the enforceable policies" is used in order to be consistent with Federal law; and, finally, in the response to comments, DGC should make it clear that only state permits from ADNRR, ADEC, and ADF&G are subject to review – not the AOGCC because it is not a "resource agency."

Very truly yours,



Randal G. Buckendorf